The Traitors CLAIM;

OR A

A Clear and Impartial CONSIDERATION

OF THE

Security as to Life,

Claimed by the

Condemned *TRAITORS* now Prisoners in the Tower of *London*, who Rendred themselves, according to his Majesties *Proclamation*, of the 6th of *June* 1660. by Advice of the Lords and Commons, then Assembled in *Parliament*.

IN A

LETTER Written *August* 20th 1661. to a Honourable Member of the House of Commons, now sitting in *Parliament*.

1 Kings 2. 36, 37. *And the King sent and called* Shimei, *and said unto him, Build thee a house in* Jerusalem, *and go not forth from thence any whither! for it shall be on that day, when thou goest out, and passest over the Brook* Kidron, *thou shalt know for certain, thou shalt surely die; thy blood shall be upon thine own head.*

Prov. 20. 28. *Mercy and Truth preserve the King: and his Throne is established by Mercy.*

Justum, Spectandum, *an in* conveniens *sidus* Medorum *Elegisset*.

LONDON, Printed in the Year 1661.

The Triplors

CLAIM

The Traytors Claim of Security, &c.

Honoured Sir,

AT your return into the Countrey, I received yours of the 20th instant, which signified your serious Debates, and Union in Parliament, in the matters which concern this Church and State. For this I thank you, and in this I rejoyce with you.

In your Letter you are pleased to put on me a task which you (knowing me so well) cannot but know, must needs be unpleasant to me, *viz.* To consider the Case of the Condemned Traitors now in the Tower, waiting for Execution; and impartially to communicate to you my thoughts, concerning the *Security as to their Lives*, which they challenge, & some on their behalfs plead; the *Question* you have thus stated.

Whether the Condemned Traitors, who rendred themselves according to the Proclamation *of his Majesty, and on trial stand Condemned, may with* Justice *and* Honour *to the King and Kingdom, be Executed upon a Bill or Act of Parliament to be past for that purpose.*

Sir, I do not a little wonder you should charge this work on me, who indeed am yours to my power, but at such enmity with all Agents in that Barbarous Murther of our late King of glorious Memory, that I could with *Tertullus* accuse them, better then with *Gamaliel* make the least Apologie (though never so Rational) for the *Security* of any one of them; How often have I imprecated God's vengeance on them? and attended the healths drunk to their confusion; triumphed in their Conviction and Condemnation; and fretted at the Reprieves of their *Execution*? Must I now by your Command be constrained to appear *Advocate* for their Blood, which spilt many years since might have prevented the spilling much Gallant, Noble, *English* Blood? yea (and what is ten thousand times more pretious) the Royal Blood of the only Protestant King and Prince.

And really Sir, I should adventure a denial of your Demands (your desire being so contrary to my Judgement) were I not awed into a compliance, by the transcendent splendor of his Majesties Clemency, conjuring down the spirit of revenge, and all vindictive thoughts, raised by the late Rebellion; but (presuming your enquiry to spring from the same Principle) I dare not but endeavour your Resolution.

Sir, I must in this undertaking enquire, in what sence, you under-

ſtand the tearm *Juſtice*? If ſtrictly and propperly as oppoſed to *Wrong*. Who knows not that a Parliament (which may diſpoſe of all our Lives at pleaſure) may juſtly *Execute* thoſe, whom the Law, by a judicial and regular proceſs, hath condemned? But foraſmuch as *ſummum jus*, wartanted by our Laws, may ſeem (*Jure Civili*) to be *ſumma injuria*; (as it was in the Caſe of the renouned *Tho. Cromwel*, concerning whoſe attainder by Parliament, a judicious Lawyer hath adviſed, *auferat oblivio ſi poteſt, ſi non utcunque ſilentium tegat*) I muſt conceive by *Juſtice* you mean *Equity*, the Bridle of *ſummum jus*, or *Truth* oppoſed unto *breach of Faith*; Your concomitant *Honour* is my Conduct to this interpretation, and then your Querie is,

Cooks.

Whether the Condemned Priſoners, who rendred themſelves upon the Proclamation *of his Majeſty, publiſhed by the Advice of his Parliament, being on Trial Convict, and Condemned, may with* Equity, Truth, *and* Honour *in King and Parliament, be Executed, on a Bill paſſed for that purpoſe.*

Sir, the Reſolve (my Judgement on deliberate thoughts doth compel me to give) to this Querie, is Negative, ſo repugnant to my former fervor, and expreſſed deſire, that I am reduced to the ſtrait of the Lord *Digbie* in the Caſe of the late unhappy Earl of *Strafford*, and must expreſs it in his words, *I am ſtill the ſame in mine opinions and affections to the Earl; I confidently believe him (them) the moſt dangerous Miniſter of State, the moſt unſupportable to free ſubjects that can be Characterd; I believe his (their) Practices in themſelves as high as ever Subject ventured on; I believe him (them) the grand Apoſtate to the Commonwealth, who muſt not expect to be pardoned it, in this, till diſpatched into another World; And yet let me tell you Sir, my hand muſt not be to that diſpatch; I proteſt as my Conſcience ſtands informed, I had rather it were off.*

I Dig- ſpeech e House Com- s, 21. 1641

Verily Sir, though theſe mens Crime is more obvious and notorious, (I humbly conceive) the reaſons which ſupercede their Execution, are more weighty then were or could be by any pleaded in the Caſe of that Honourable Perſon, whoſe quallity and ſingularity, with the Popular out-cry, might (had his Conviction been juſt and clear) have neceſſitated his Execution, who had no ſecurity for his Life ſave his Princes favour; whilſt our condemned Priſoners cling cloſe to the *Faith* and *Honour* of their Soveraign, to keep them from the Gallowes; which Sir, I muſt (in ſobriety and plainneſs) tell you (if right reaſon muſt direct their Execution) will prevent their being turned off the Ladder, though they were tied up to the tree; and cauſe them

them to be led back to Prison, to be otherwise disposed at his Majestis pleasure. But to come to the pinch of the Case, and Crisis of the Querie.

I read Sir in *Justins* History, the *Medes* (the Empire not yet obtained) made certain Cities tributary, and conceded to them Immunities and Liberties, larger than the Empire would allow; which once possessed, it was disputed, *Whether in Justice and Honour the former indulged Priviledges must be maintained?* to resolve which, this rule was dictated, *Spectandum est, an in Conventione fidem* Medorum *elegissent*. It is to be considered, Whether they chose, confided in the Faith of the *Medes*. *Lib.* 4.

Sir, the *Publick Faith* of any People and Nation is the most sacred and inviolable Security that can be given; as the onely Bond of humane Society, in so much that the Chosen, confided in sence thereof, beyond the intent of the persons plighting, or the strict constructions of the Words, must be maintained and oblige; as is evident in the case of the *Gibeonites*, on which a late Prelate of our Church doth Comment; *Joshua might have taken advantage of their own words, & have said, you are come from a far Country, these Cities are near, these are not therefore the People to whom we are engaged*; Israel *had put in a direct Caveat against Vicinity*; Joshuah's *heart was far from making a League with a Canaanite*: Yet were these *Gibeonites* (condemned in the directions given by God concerning the *Canaanites*) secured as to their Lives; though not other Concernments and their Execution 300 years after by the authority of King *Saul*, judged a *perfideous murther*, avenged by the Lord, and only expiated by the blood of the Executioners posterity. Bishop [illegible] Contemplations, *Page* 91. *Grotius de jure Belli Paeis. Lib.* 2. *Cap.* [illegible] *Page* 22.

If Sir, these have on any probable ground Chosen, confided in the *Faith* and *Honour* of our King and Kingdome; yet (whatsoever I have said in the heat of revenge) I cannot but (in cool blood) commend the deliberation of his Majesty and the Parliament, in the weighty matters of mens Lives, and confess, *Secunda cogitationes sunt meliores*.

For Sir, being put (by your Command) to consider these Traytors claim, I am constrained to conclude for, and not against their Lives; of which they must needs be judged unworthy.

The ground of these mens claim as to the security of their Lives, is the *Proclamation* of his Majesty the sixth of *June*, 1660. by advice of the Lords and Commons then in Parliament assembled, the tenor whereof is thus.

Whereas,

Whereas Owen Roe, Augustine Garland, Robert Tichbourne, *&c. being deeply guilty of that most detestable and bloody Treason, in sitting upon, and giving Judgement against the Life of our Royal Father; and out of a sence of their own guilt, have lately fled and obscured themselves, whereby they cannot be apprehended and brought to a* personal Tryal *for their said Treasons, according to Law. We do therefore by the advice of our Lords and Commons in Parliament assembled, Command, Publish and Declare, by this our Proclamation, That all and every the persons before named, shall within fourteen dayes next after the publishing of this our Royal Proclamation, personally appear, and render themselves to our Speaker, &c. UNDER PAIN OF BEING EXCEPTED FROM ANY PARDON OR INDEMNITY, BOTH FOR THEIR RESPECTIVE LIVES AND ESTATES.*

To this Proclamation these men have Conformed, and within the time limited, according to the directions given, they rendred themselves to *Tryal*: Confiding in the *Faith and Honour* of the King on the advice of his *Lords and Commons* assembled in Parliament, as their security to escape the penalty, so as not to be *excepted from all Pardon*; but that their *Estates* being taken, their *Lives* (being the all left them, and liable to Execution) they doubt not, the Grace of this Proclamation intended to preserve, to run out their course in Nature.

It must Sir, be granted, this Proclamation containeth *no positive expres terms*, which might fully speak the intention of his Majesty, and his Parliament, toward the Lives of these Miscreants, and give an absolute indisputable security for them; nor indeed is this the Question; for this granted, voideth not their claim; which is only this, *Fidem Anglorum in conventione Elegimus*, we chose, confided in *Englands* Faith, in the Proclamation of the King on advice of Parliament.

tius de e belli & is lib. 2. 13. pag. .cap. 16. 251.

Sir, all Civilians determine, the words of any Covenant to bind in that sence which they *understand and believe* who are in them concerned, and to whom the security is by them engaged; otherwise ambiguous terms would fallaciously void all Covenants; and truly all human security, this (as I have before noted) was the case of the *Gibeonites*, beyond the intention and seeming expressions of *Joshua and his Princes*.

Sir, resolving my self into their Condition, to give a faithful and impartial Judgement (without passion or prejudice) on these mens claim; I humbly conceive there are many considerable things, which concurre and constitute this Royal Proclamation *a full Moral Security for their Lives*, viz.

First,

First, the Proclamation is penned in a ſtile of Clemency, and the words bear to theſe men a moſt favourable Aſpect, being varied from the expreſſions uſual in a meer ſummons to Judgement. For

1. It complains *they were fled, obſcured themſelves, whereby they could not be apprehended and brought to a Perſonal and Legal Tryal*; (not that they had *eſcaped from Juſtice*, the proper Plaint of a meer Summons) as if their Conviction and Condemnation were all intended, whereupon they are *required to appear and render themſelves to Tryal* (not to Juſtice) for this Proclamation can exſpect no anſwer beyond what it chargeth.

2. The Proclamation is Sub pœnâ, *under pain of being excepted from Pardon*, ſaith the Title; *any Pardon both for Life and Eſtate*, ſaith the Body of it; with terms of diſcrimination, implying *the one being accepted, the other might be avoided on due perſonal appearance*. Seeing to be drawn, hanged, and quartered, was the due pain aſſigned by the Law for their Offence and Treaſon, *exception from Pardon* was a new pain, on the new Offence of their *Latency and Eſcape from Tryal*, which if it imply not an immunity on their appearance, I muſt confeſs I am to ſeek what it ſignifieth, or intended to expreſs; and the Speech of King and Parliament muſt not be (*vox & preterea nihil,*) *inſignificant*.

Sir, ſo rational is this ground of Claim, made by theſe Condemned perſons, that the whole Parliament have on ſerious and mature debates (without once hearing theſe Delinquents Pleas) in a full formal Act of Parliament declared, *That there were ſome conceived doubtful words in the ſaid Proclamation; upon which the Perſons who rendred themſelves, and appeared according as was directed, did pretend to ſome Favour*: Now Sir, who knoweth not that the doubtful terms of any Law muſt be expounded in favour to the Delinquent, *Favores ſunt ampliandi*. *Act of demnity pag. 32*

Sir, the terms in this Proclamation propound a new pain, on a new offence, corrigible within 14 dayes; and plainly imply *ſome Favour*, and an immunity from, and avoidancy of the pain; but to have *their Lives ſpared*, is the leaſt of Favours which can be implyed, expected or pretended unto, by the *conceived doubtful* words, which bear a favourable ſound and Aſpect, and ſo cleerly engage a *publick Faith* for the ſecurity of their miſerable Life.

Secondly, *Lex currit cum præxi*, the Concomitants of this Proclamation make the *publick Faith* a ſecurity for theſe mens Lives much more legible, by ſpelling and putting together theſe ſeveral Obſervations.

1. His Majeſties Royal Declaration (in the time of his unjuſt Exile

laration Dumlinge 16 . 1650.

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Exile) ever excepted out of the general Pardon by him graciously offered, *only some few* (not all) *of the chief Authors* (not secondary Instruments) *of the Murder of his Royal Father*; importing grace to be extended to others under the same strict and general Guilt; and to whom if not to these?

2. These few were referred to the Exception of Parliament; yea of that adopted Parliament, in respect of which these men are denominated the *Parliaments Prisoners*; concerning whom I have been informed his Majesty would never yet order one particular Circumstance.

3. The Commons in this Parliament, with His Majesties knowledge and consent (as it hath been reported) did Vote *seven and no more* of the men of this capacity, to be wholly excepted from Mercy, both to Life and Estate.

4. Considering many did obscure themselves, so as that their Conviction (desireable as to the Justice and Honour of the Nation) could not be effected, the Lords and Commons advised, and on their advice his Majesty published this Proclamation for their *personal appearance to Tryal only*, and that on pain of being excepted from *any Pardon*, (the business then under Consideration of Parliament) they having in their hands such chief Authors of the Kings death, who were most obnoxious to Guilt, and proper Objects for severity of Justice.

5. These persons then Latent, securing their own Lives, hearing of this Proclamation, did, (notwithstanding the sence of the Vulgar, that *appearance would secure their Lives*,) demur to their appearance; until their Friends, (assured by many Honourable Members of Parliament, who best understood the Proclamation) advised, that *Indemnity to Life* was intended to such as should appear as was directed; in confidence whereof (waving other means for their preservation, within their own power) they appeared, rendered themselves in time and manner advised; putting their Lives under the protection of the *publick Faith*, the most certain security which could be imagined.

6. *John Dixwell*, and some others of this Confederacy, uncapable by sickness, or late intelligence, of appearing within the time limited, petitioned the Parliament for some few dayes more, in which to appear; but the grace of this Proclamation was denyed to be extended one day longer, which sure was some grace, to such as in time conformed to it.

7. The House of Commons (Principally concerned, Chief and first Advisers of this Gracious Proclamation) having determined the number of Persons to be made Examples of Dread, and undergo the utmost of the Law, Engrossed, Passed, and Transmitted to the Lords, the *Bill for Indemnity* with a full and Expresse pardon as to these mens Lives; to which the Lords demurred, yet the Commons in three several conferences, asserted the *Publique faith and honour engaged by this Proclamation*; which was accurely and solidly argued by Sir *Heneag Finch* his Majesties Soliciter General, and Sir *William Wild* Recorder of *London*, and other Honourable Members managing that Conference; and being resolved never to break the same, and thereby suggest to the World, the Proclamation was advised as a plausible (not to say Perfideous) duckoy to flying birds: at last yielded to passe the Act, with a proviso, *They not to be Executed when Condemned, without an Act of Parliament or Bill to be passed for that purpose*; which they resolved should never be by that Parliament, and it was more then probable, would never be by another; simple Execution being too odious for their debates, and determinations, and the security by the Proclamation given, being by these debates made so legible, that all men might Run and Read, *These men could not suffer without high scandal*, if not *open violence*, unto the Publique faith of the Kingdome.

8. Every of these men well documented (by the Parliaments debates and Declaration in the Act of Indemnity) did on their arraignment, Convict themselves, and in open Court plead the Proclamation, (as the benefit of Clergy) which was admitted; and so far declared by *Sir Orlando Bridgman* Lord Chief Justice in that Commission; that the spectators (most fit and proper Expositors in all Judicial proceedings, which hath ever caused Courts of Judicature to be open) did understand, and conclude, *though these men were Condemned, yet their lives were secured unto them.*

If Sir, these eight Considerations being put together, do not spel this Octo Sillabon, PUBLIQUE-FAITH-SECURING-THEIR-LIVES, as a thing legible to them and all sober men resolved into their case, to be rationally chosen, concluded and confided in, I must go again to School to learn my *A. B. C.* and will advise *Baxter*, *Goffe*,

Whaley and others, not trusting to the Proclamation, but securing their own lives, do write over every Gate, under every Quarter of these men, when executed, CREDULOUS FOOLS. And *Dixwel* and his fellow Petitioners to write over the door of the House of Commons, who admitted not their surrendring themselves BLESSED SEVERITY. The Condition of these men by confidence of grace, being rendred worse then theirs that fled from it.

But some Zealous and Royal hearts, grudging the least grace to such Regicides, will object (that with which I have this long time passionately deceived my self and others) and say, *Sir*, you discourse of the nature of a Covenant, and plead for these Miscreants lives, as if his Majesty and the Parliament had passed with them a formal and positive contract; whereas the Proclamation is a bare summons for such (who in conscience of their guilt) were fled, and obscured, that they appear and abide the Tryal of the Law, which was their duty, without being directed by this Proclamation. To such I crave leave to answer, I grant the Proclamation is a *Summons* to what was duty without it, nor can they deny it is *Sub-pœna* which must necessarily imply a Condition whereby the Pain may be voided, otherwise it is in vain expressed.

Grotius *de jure bel.* & pa. lib 2. cap. 16.

Sir, Civilians tell us of a *Pactum vetans* a Covenant of *Prohibition* used in humane society, and declare *pactum vetans magis vincit jubentem, quam positive jubens*; it more strongly obligeth the Superiour, then a positive precept; All *Summons* is a Covenant of this nature, and therefore most sacred and inviolable; So as that a *Cessation* from the thing forbidden, must necessarily void the penaltie. Nature teacheth the Mother, with a rod in her hand, to call in the wild wanton child, on pain of being whipt, if overtaken and fetched in; The Child confiding in her words, returneth with speed and escapeth the correction; the General to summon a Garison to be yielded within 24. hours, on pain of burning to the Town, and slaughter to every man; They yield to the *Summons*, and are saved: Our Law directs a Proclamation on pain of an Out-law, the defendant appeareth and hath liberty of plea. His late Majesty (as do all Princes in like case) summoned such as followed the Earl of *Ess.* to lay down their Armes, and repair to their houses within six dayes, on pain of being judged *Rebells and Traytors*; some accordingly

Proclamation from *York*, *Aug.* 9. 1642.

accordingly returned and avoided the penalty; In these and the like cases the penalty could not be inflicted without barbarous breach of faith and high dishonour.

The nature, usage, and obligation of *A pactum vetans*, is commended by many examples in Holy Writ, as *Joabs* Summons of the City of *Abell* to render rebellious *Sheba* to Justice, on pain of being sacked: And *Solomons* confinement of *Abiathar* to his City *Anathoth*, and *Shimey* to his house on pain of Death; *Abell* did escape by the head of *Sheba*, nor had *Shimey* dyed if he had kept within his bounds as did *Abiathar*.

This Proclamation is a summons of duty but *sub pœna*; and so a *Covenant* though *vetans*, to the future Latencie of these men; the nature of the pain is their advantage; had it been (what is usual in cases of this nature) a Summons to appear on pain *of being concluded guilty, and to suffer without mercy*; their appearance had secured to them a due and fair tryal, in which to plead for their lives; but the *pain of being excepted from pardon both for life and estate* must needs secure them the one; otherwise what is the pain to be avoided by obedience to the prohibition?

This *pactum vetans* is so natural to men, so suitable to Soveraign Majesty, a security so sacred and inviolably obliging in humane society, that God himself maketh it his first transaction with his creature man; *In the day thou eatest thereof thou shalt die the death*, was the form and tenure of the first Covenant; Will any man deny the same to assure *life* on the condition of the prescribed abstinency from the forbidden fruit?

Civilians render three (I shall make them four) reasons why a *pactum vetans*, a *Covenant of prohibition* should more firmly oblige the prescriber, than a positive precept, and more expres Covenant; every of these reasons concurre in our Traytors case, to Corroborate their claim:

1. The matter thereby prohibited is *special*, not general, [*obscure not your selves from a legal Tryal*] and their rule is, *peculiare* & quod ad rem *propius accedit, magis obligat quam generale*, what is special, and cometh neareſt the matter, doth more bind, than what is general and more remote. *Cicero* lib. 2. *Grotius* de jure bel. & pac. pag. 262.

2. The time in such Covenants is limited, which being slipt, they may sit down and sing that Cyrene song, *Fronte capillata post est occasio calva, Oh that we had known in that our day the things which concerned our peace, but are now hid from our eyes.* [*appear and render your selves within fourteen dayes*] Hence *Dixwell* and his fellow Petitioners, could not procure one day, to the grace exhibited in the Proclamation; the rule is *quod faciendum est certo tempore, magis obligat quam quod quovis tempore fieri potest*; what is to be done in a certain time, bindeth more than what is to be done at any time.

3. This kind of Covenant usually passeth *sub pœna*; implying immunity and escape; [on pain of being excepted from any pardon both for life and estate] the rule is (*quod pœnam adjunctam habet, magis obligat quam quod pœna vacat*) a prohibition with penalty binds more than that without; they could be but drawn out of their Dens to Tyburn, if they had not appeared according to the Proclamation.

4. The condition of the *pactum vetans* is prescribed, not capitulated, imposed by Majesty and Authority, condescending to mitigate severity, and release rigour; leaving the *liberum arbitrium* of the men concerned, to this bare choise, Come and appear within fourteen dayes, or be excepted from any pardon both for life and estate: (more than which cannot befal those that are fled, and refused to appear) and this rule cannot be denied *authoritate præscripta, magis obligant quam capitulata*; terms imposed by authority do more strictly binde; than terms capitulated upon a fair and equal Treaty.

Sir, on the serious consideration of these mens claim, I see not how it can be denied, they have the publick faith of the Kingdom engaged for their lives; the violation whereof must be greatly dishonourable to the King and Parliament; yea, though by a Bill to be passed for their execution; which I humbly conceive is below a Parliament; who may (with more justice and honour) by their Legislative power, on politique and prudent grounds, take away the life of one whom the Law cannot Convict and Condemn; than direct the execution of them over whom the Law had full power, until barred by the force of publique faith, Rationally claimed to supersede this last Act.

To

To pretend they were not a Parliament (who gave this security) according to the ſtrictneſs of our Law, and Nations Conſtitution, will not make an objection of any ſtrength: For

1. The queſtion is not about an ordinary proceſs in our Law; but a tranſaction purely determinable by the Civil Law; the rules of Common juſtice and honour among men.

2. They were a full and free Convention, and Collective body of the Kingdom, capable to repreſent the Nation, and engage the faith thereof, though convened by a defective erroneous Writ, through the neceſſity of the times, and eſtate of the Kingdom.

3. They were the firſt free Parliament, the fruit of all the Convulſions and Commotions occaſioned by our deſired liberty, and we were to be ruled, and in all caſes reſolved by our own reaſons, declared by repreſentatives of our own choice.

4. They were His Majeſties Parliament, convened for his ſake, to his happy and honourable return; (by which our Land hath been revived) legitimated by his adoption, animated by his preſence, and corroborated by his concurrence; pardon being the eminent and undiſputable prerogative of his Imperial Crown; whoſe Royal Faith hereby engaged, inviolably ſecureth *ſome grace* to theſe poor wretches.

Theſe things do evidence that Parliament to have been ſufficiently capacitated to give an aſſurance by publique faith; which cannot be avoided by defect of a punctilio, or circumſtance peculiar to our Law; but doth ſo ſtrengthen theſe Priſoners Gates and Barrs, that I cannot but profeſs, I ſee not how they can ever be drawn to execution, without drawing the guilt and diſgrace of cruelty, revenge and perfidie on a Faith-keeping Prince and Parliament, though by a Bill to be paſſed for that purpoſe.

Honoured Sir, Did theſe Traytors want this claim, or their claim want reaſon, yet common prudence, and the honour of His Majeſties Clemency now ſeemeth to me to be a conſiderable ſuperſedeas to the execution of them: For Sir,

1. The ſplendor of His Majeſties Clemency (the *eſſe* ſay the Græcians, the honour of a Juſt man ſay the Romans) being

being much clouded by the Universality of the Object (many singulars thinking they needed no Act of Grace, and some resolved against an Act of Oblivion) doth sparkle with such Orient brightness, by the superseding the execution of these Defamed, Convicted, Condemned Individuals: it hereby exciting in its full proportion and very formality, (which Navarrus thus defines [illegible]. And Grotius doth thus Translate it: [illegible] apud Hebraeos est temperata relaxatio summi juris, and I must English, Clemency is to save the life of a Malefactor tied up to the Gallows: that I cannot desire to see it darkened by such an Act as revenge may justly provoke, but the vulgar judging by sense will not discern.

2. The quality of these persons, and their present Estate doth abate the fury conceived against them, they seem to be so weak in their Naturals, that their being Parliament men (which lead them into temptation) may be a bar to judge their greatest Crime; they appear too simple to have been *first Imaginers* of that Horrid Regicide, or *Agitators* of that High Court (or to use his Majesties phrase) *chief Authors of that Murther*: And then Sir, they are not the intended objects of the declared expectation from his Royal Grace and pardon: I cannot without smiling, remember how the poor mens Consciences were troubled at the Terms, *Traytorously, maliciously*, in their Indictment, (on which the Solicitor did accutely gloss; My Lord, they think they might Sentence the King to Death, *Meekly, Innocently, Charitably and Honestly*) which certainly did so far bespeak their simplicity; that had our Law allowed Accessaries in Treason, Judge and Jury would have saved them by their Clergy: How tremblingly did they beg to wave their Plea, (as if run into a premunire, by pleading *not guilty*) that they might confess and be hang'd, without this grace interposed? no doubt the Court was well pleased with their Profound Apologies; one pleading, *I was young, in Drink, eating sower Grapes, not knowing they would set mine teeth on edge*, Another, *I withstood, gainsaid that wicked Sentence, yet was simply drawn in to Sign and Seal the same*; A third, *I looked but over the Hedge, I appeared*

once

since and against us only, and as a Member of that wicked Race with an intent to prevent their Mischief, against which I got an Antidote to pray with me. Yet Sir, Are these weak men condemned, attainted in Blood, their estate confiscate, and by spending their miserable lives in Prison, as it were hanged in Chains, as meet living Monuments, of God and the Kings Justice (which hath already swallowed up the Capital Offenders) and were lasting Spectacles of Dread to future Regicides, then their withering Quarters are capable of; being a lively Comment on Psal. 59. vers. 11. Slay not them, least my people forget it. For my part, I think Justice is not more orient by that refraction of Clemency, sparing to those men that little which is dearest to them; when by the merciful reserve of such dreadful Spectacles for men to behold and consider; insomuch that I could almost envy their very nature, and death it self, which ere long will remove them from a piece of pity, so prudently severe.

3. The end of punishment must be *Caution*, not *Revenge*; Excellent is the saying of *Plato*, [illegible] and again, [illegible] by the Lawgiver. *Sen. de Clemen. chap. 16.*

Which the serious *Seneca* thus rendreth; *Nemo prudens punit quia peccatum est, sed ne peccetur, revocari enim præterita non possunt, futura prohibentur*; and again, *nemo bonus quidquam nocendi causa facit, sed ne pecces, nec vindicat ad præteritum, sed ad futurum reservatur pœna; non enim ira sanat sed cavet.* The God of Justice hath prescribed punishment, that others *might hear and fear, and do no more so wickedly*; so far as the Execution of the same looketh back, it is *revenge*, and onely *punishment* by looking forward, at this end it must be level'd, and accordingly squared; *pœna ad paucos, metus ad omnes*, is a rule directing all Executions; Justice is ordinarily satisfied by the Execution of a few chief Offenders; the cutting off the Multitude under the same guilt, is over Sanguinary and revengeful; Martial Law alloweth equal Mutiners in an Army, the chance of a Dice on a Drum Head, for the single Example of their Mutinie. Prudent Princes ever proclaimed their Justice by the Execution of a few of the many Condemned Malefactors; *Sheba's* Head was judged a sufficient Sacrifice for the many Rebels

bels he had fe[illegible] King Henry the seventh made his Justice [illegible] turning his face; and [illegible] looking through the Iron Grates, then by the turning the one or the other over the Ladder, though both were Competent Pretenders to the Crown, unto bloody and dangerous Rebellions: His late Martyred Majesty charged his Son should not Revenge (whilst he could not but punish) his Death; and his Majesty as obedient to the Charge, declared to exempt from all pardon, some few chief Actors of that Murther, the which the Commons first compute to be seven, a sufficient number.

Sir, These things considered, were not the Faith and Honour of this Kingdom, engaged to secure the Lives of these Condemned Persons; I could not but adore his Majesties Clemency in their thus long reprieve, whether it now desire may continue; being convinced that such who shall provoke our *David*, to cut off these *Shimei's* (most wisely confined to their proper places) will be found [illegible] *Saul* of Jarvish, to hard for him, and *Adversaries* to him, who hereby maketh all the world to know he is *King in England*, graciously holding the Sword of Justice which justly hangs over, from falling on the neck of these Regicides.

Sir, pardon my plainness and familiarity in this rude Discourse, for which if I be called to the Barr of the House, for [illegible] with the Author of this, I shall yield your Commands as my Commission, and expect your defence of

Your most Humble and Obliged Servant,

Philopater Philoroy.

FINIS.

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